

Proposed Uniform Regulation for  
Apportionment of Income from the Sale of Telecommunications  
and Similar Services  
(~~4-14-045-26-04~~)

Draft – For Discussion Purposes Only

**Special rules: Telecommunications and similar service providers.** The following special rules are established with respect to the apportionment of income from the sale of telecommunications and similar services by a person that ~~are~~ is taxable both in this state and in one or more other states.

(1) In general. When a person providing telecommunication or similar services has income from sources both within and without this state, the amount of business income from sources within this state from such business activity shall be determined by Article IV of the Multistate Tax Compact and the regulations issued thereunder by this state, except as modified by this regulation.

(2) Definitions.

(i) “communication” means any sign, signal, writing, image, sound or intelligence of any nature including voice, data, text, audio, video, or any other information or instructions.

(ii) “telecommunications” means the electromagnetic transmission, conveyance, routing, emission or reception of communication by or through the use of any medium, including wires, cables, satellite, microwave, electromagnetic waves, light waves, radio waves, the internet, or any combination of those or other media now in existence or that might be devised; ~~but telecommunications~~ Telecommunications does not include the communication content of any such transmission, conveyance, routing, emission or reception.

(iii) “telecommunications or similar service” means the provision of any telecommunications, including telecommunications provided by resellers. The term includes, but is not limited to, , telephone service, facsimile service, telegraph service, paging service, personal communication services, satellite telephone service, mobile or cellular telephone service, and related fees and ancillary services, including universal service fees, detailed billing service, directory assistance, service initiation, service disconnection, voice mail service, and vertical services, such as caller ID and three-way calling. In addition, the term includes, but is not limited to, the provision of telecommunication network access, information service, voice over internet protocol services, cable or satellite television or radio programming distribution, Internet access service, web search portals, and data processing services.

(iv) "outerjurisdictional property" means tangible personal property, such as orbiting satellites, undersea transmission cables and the like, that are owned or rented by the taxpayer and used in a telecommunications or similar service business, but that are not physically located in any particular state.

(v) A. "service address" means ~~(i)~~ the location of the customer's equipment ~~from which the customer which~~ originates or receives the communication, regardless of the address to which the fee for telecommunication or similar service is billed or from which it is paid. B. If the location in (2)(v)A of this section is not known reasonably determinable, "service address" means the origination point of the signal of the telecommunications or similar service first identified by either the seller's ~~telecommunications~~ system or in information received by the seller from its service provider, where the system used to transport such signals is not that of the seller. C. If the locations in divisions (2)(v)A and B of this section are not known, "service address" means the location of the customer's place of primary use as defined in the Mobile Telecommunications Sourcing Conformity Act.

(vi) "telecommunication network access service" means the provision by a local exchange telecommunication service provider of the use of its local exchange network by an interexchange telecommunication service provider to originate or terminate the interexchange telecommunication service provider's traffic carried to or from a distant exchange.

### (3) Apportionment and Allocation

(i) A ~~corporation engaged in the business of~~ person providing telecommunications or similar services that is taxable both within and without this state, shall allocate and apportion its net income as provided in this rule.

(ii) All items of nonbusiness income shall be allocated pursuant to the provisions of [Section 4 of UDITPA or state equivalent].

(iii) All business income shall be apportioned to this state by multiplying that income by the apportionment percentage. The apportionment percentage is determined by adding the taxpayer's sales factor, property factor and payroll factor and dividing that sum by three. If one of the factors is missing, the remaining factors are added and that sum is divided by two. If two of the factors are missing, the remaining factor is the apportionment percentage. A property, payroll, or sales factor is missing if the taxpayer has no such property, payroll or sales, respectively, anywhere.

(iv) Except as otherwise provided in this, or another, special rule, the property factor shall be determined in accordance with [Sections 9, 10, and 11 of UDITPA][or state equivalent], the payroll factor in accordance with [Sections 13

and 14 of UDITPA][or state equivalent], and the sales factor in accordance with [Sections 15, 16 and 17 of UDITPA][or state equivalent].

(4~~v~~) Property Factor.

(4~~i~~) Outerjurisdictional property that is used by a taxpayer in providing a telecommunications or similar service shall be excluded from the numerator and from the denominator of the property factor.

(5~~vi~~) Sales Factor ~~Numerator. A corporation that has income from providing telecommunications services that are taxable both within and without this state shall include the following in the sales factor numerator:~~ Sales Factor Numerator. The numerator of the sales factor shall include all gross receipts of the taxpayer from sources within this state, including, but not limited to, the following:

A. receipts from charges for providing telecommunications or similar services access in this state. “Telecommunication or similar service access in this state” means the ability to originate or terminate the electromagnetic transmission of a communication from a location within this state. An example of this type of receipt is a monthly subscriber fee or customer charge for the ability to originate or terminate a communication at a service address located in this state and without regard to the actual amount of communications originated or terminated at that service address.

B. receipts from charges for telecommunications or similar services not billed on a per-communication or other variable unit basis, if the service address is in this state. An example of this type of receipt is a fixed charge for unlimited telecommunication or similar service, or for up to a set amount or minutes of telecommunication or similar service.

C. receipts from charges for cellular or mobile telecommunications services required to be sourced under the Mobile Telecommunications Sourcing Act, Public Law 106-252, as it may be amended from time to time, if the source, as determined under that act, is in this state; [move – below “F”]

D. receipts from charges for telecommunications or similar services billed on a per-communication or other variable unit basis, if the communication originates and terminates in this state;

E. receipts from charges for telecommunications or similar services billed on a per-communication or other variable unit basis, if the communication either originates or terminates in this state, and the service address is located in this state;

F. receipts from any other charges for telecommunications or similar service if the service address is in this state.

G. receipts from charges for telecommunication network access if the purchasing interexchange carrier's network traffic originates and terminates in this state; or originates or terminates in this state, and the interexchange carrier's customer's service address is located in this state.